

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-003898

03/01/2011

HON. PAMELA GATES

CLERK OF THE COURT

E. Toledo

Deputy

IN RE THE MARRIAGE OF
HEIDI M NORTHRUP

JOSEPHINE CUCCURULLO III

AND

RODNEY A MOEDT

MARTIN F KEIL JR.

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

A trial in this dissolution case was held on February 1, 2011. Petitioner Heidi Northrup (hereinafter referred to as "Mother") and Respondent Rodney Moedt (hereinafter referred to as "Father") are sworn and offered testimony and other evidence.

I. JURISDICTION

THE COURT FINDS:

1. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition of Dissolution of Marriage.
2. The conciliation provisions of A.R.S. § 25-381.09 have been met or do not apply.
3. The marriage is irretrievably broken and there is not reasonable prospect for reconciliation.
4. The parties have two minor children: Paige (DOB: 8/29/00) and Sydney (DOB: 7/09/03). The parties' minor children lived in Arizona with a parent or a person

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acting as a parent, for at least six consecutive months or more before this action was commenced (or at least from the time of birth of the children until this action was commenced), such that Arizona is the home state vested with jurisdiction to make a child custody determination pursuant to A.R.S. § 25-1031(A)(1).

5. This was not a covenant marriage.
6. Mother is not pregnant.
7. To the extent that it has jurisdiction to do so, the Court has considered, approved, and made provision for, when applicable, child custody and support, spousal maintenance, and the division of property and debts.

Based thereon,

II. DISSOLUTION OF MARRIAGE

IT IS ORDERED that the marriage between Heidi Northrup and Rodney Moedt is dissolved and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

III. PARENT EDUCATION PROGRAM.

Father has not completed the Parent Education Program requirement of A.R.S. § 25-352. Mother has completed the Parent Education Program.

IT IS ORDERED that Father shall complete an approved Parent Education Program and file proof of completion thereof with the Clerk of this Court within thirty days of the entry of this Judgment.

IV. LEGAL CUSTODY AND PARENTING TIME

THE COURT FINDS that the parties have two minor child: Paige and Sydney. In accordance with A.R.S. § 25-403, the Court finds that it is in the best interest of the minor children to award Mother sole legal custody. The Court bases its decision, *inter alia*, on Father's mental health, substance abuse, and lack of financial and residential stability. At this time, Father lacks a permanent residence to exercise parenting time with the minor children. In entering this order, the Court was mindful that as a matter of public policy, absent evidence to the contrary, "it is in a child[ren]'s best interest: (1) To have substantial, frequent, meaningful

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and continuing parenting time with both parents[; and] (2) To have both parents participate in decision-making about the child[ren].” See A.R.S. § 25-103(B).

In entering orders regarding custody and parenting time, the Court has considered all of the factors set forth in A.R.S. § 25-403 and finds the following:

1. The wishes of the children’s parent or parents as to custody. Mother seeks sole legal custody. Father seeks joint legal custody.
2. The wishes of the children as to the custodian. The children were not interviewed in connection with this proceeding.
3. The interaction and interrelationship of the children with the children’s parent or parents, the children’s siblings and any other person who may significantly affect the children’s best interest. Father and Mother separated in August 2009. Both parties were working as nurses until Father was fired in approximately April 2010. Father moved from Arizona in approximately October 2010. Mother alleged that Father left Arizona without telling the children he was moving. Mother also alleged that Father has not seen the children since October 2010. She testified that Father has spoken with the children approximately 10 times since October 2010. Mother testified that the children love Father and she hopes he can remain involved in their lives. Mother has reasonable concerns regarding Father’s financial stability, substance abuse and his mental health. Mother testified that Father’s sister loves the minor children. Mother alleged that Father’s sister could serve as a supervisor for Father’s parenting time until Father demonstrates mental health stability and continued sobriety.
4. The children’s adjustment to home, school and community. Mother testified that the children are adjusting to their home, school and community.
5. The mental and physical health of all individuals involved. Father has been diagnosed with bi-polar. Although Father alleged that he is continuing treatment, Father offered no proof of his continued treatment. Mother also expressed concern regarding Father’s use of alcohol. Father alleged that he is sober; however, a test following the hearing demonstrated that Father was positive for EtG. The Court has concern regarding Father’s lack of candor or self-awareness of his current situation. Father alleged that since his separation he has no urge to consume alcohol. He further testified that he was no longer consuming alcohol. Obviously, Father’s testimony was inaccurate. Prior to considering a petition to modify parenting time to remove the requirement of supervision, Father shall

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obtain verification from a psychologist/psychiatrist that Father is complying with all treatment and recommendations for his bi-polar. Father shall also demonstrate that he maintaining sobriety.

6. Which parent is more likely to allow the children frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the Court determines that a parent is acting in good faith to protect the children from witnessing an act of domestic violence or being a victim of domestic violence or child abuse. The Court finds that Mother is willing to allow the children frequent and meaningful continuing contact provided that the children are safe.
7. Whether one parent, both parents or neither parent has provided primary care of the children. Recently, Mother has provided exclusive care of the minor children.
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody. There are is no agreement regarding custody.
9. Whether a parent has complied with Chapter 3, Article 5 of Title 25 (Parent Information Program). Mother has complied with this requirement. Father has not complied with this requirement.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under A.R.S. § 13-2907.02. Neither party has been convicted of an act of false reporting of child abuse or neglect under A.R.S. § 13-2907.02.
11. Whether there has been domestic violence or child abuse as defined in A.R.S. § 25-403.03. There has been no domestic violence or child abuse as defined in A.R.S. § 25-403.03.

IT IS ORDERED:

1. Mother is awarded sole legal custody.
2. Each party is entitled to full and unrestricted access to all medical, dental, prescription and health related records of the children and may secure information from and consult with all health care professionals providing care of the minor children. Each party shall keep the other party informed of the names, addresses and telephone numbers of all such health care providers. A parent who attempts to restrict the release of document or information by the custodian without a prior court order is subject to appropriate legal sanction.

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3. Each party is entitled to full and unrestricted access to all school records, teacher, administrators, and other school officials involved in the children's education. Both parents shall be listed as and identified as contact persons on all records. A parent who attempts to restrict the release of document or information by the custodian without a prior court order is subject to appropriate legal sanction.
4. In the event of any emergency or urgent circumstances involving the children, the party then having physical custody of the child shall inform the other party of the nature of the emergency or urgent circumstance as soon as is reasonably possible.
5. Each party shall have the right to attend and participate in school conferences, activities, and events, extra-curricular activities, and any other similar event in which parents are routinely invited or permitted to attend.
6. Unless restricted by Court order, each party shall keep the other informed of his/her home address, home telephone number, employer and address, work telephone number, and, if applicable, cellular telephone number and e-mail address.
7. Neither party shall make derogatory, disparaging, or similarly negative comments about the other party in the presence of the minor child. Neither party shall discuss family law legal proceedings with the children or use the children as a messenger for parenting issues.

Mother requested that Father's parenting time be supervised. A parent who is not granted custody of the children is entitled to reasonable parenting time rights to ensure that the minor children have frequent and continuing contact with the noncustodial parent unless the Court finds, after a hearing that parenting time would endanger seriously the children's physical, mental, moral or emotional health. *See* A.R.S. § 25-408(A). In this case, the Court finds that unrestricted parenting time between Father and the minor children would endanger seriously the children's physical, mental, moral or emotional health. At this time, Father has not demonstrated that he is receiving treatment for his mental health. Further, the Court finds that Father is continuing to consume alcohol. Father's lack of awareness and candor regarding his continued substance abuse is concerning. Therefore, Father's parenting time shall be supervised. Father's parenting time may be supervised by any party agreeable to both parties. The Court also finds that the children's paternal aunt is an appropriate supervisor. The paternal aunt is instructed that supervised parenting time requires the supervisor to see and hear the interactions between Father and the minor children at all times during Father's parenting time.

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IT IS ORDERED that Mother shall be designated as the primary residential parent. Father shall be entitled to the following supervised parenting time with the minor child:

1. Father shall have supervised parenting time for one week over spring break, one week over winter break and two weeks of parenting time in the summer.
2. If Father is in Arizona, he may exercise additional supervised parenting time. Father shall provide Mother with reasonable advanced notice of his intent to exercise parenting time in Arizona. Father's parenting time may be supervised by any person mutually agreed up between Mother and Father.
3. If Father is current in his child support, the parties shall evenly divide the costs to transport the minor children. If Father is not current in his child support, Father shall bear 100% of the costs to transport the minor children for his parenting time.
4. Each party shall allow the other party reasonable telephone access with the children while the children are in his/her physical custody. Such telephone access shall be before the children's ordinary bedtime and may be initiated by either party or the children. The party having physical custody of the children at the time of the telephone contact shall not listen in, record, or otherwise interfere with said contact.
5. Each party has the right and responsibility to make, during the time that party has physical custody, routine daily decisions regarding the children's care consistent with the major decisions made by Mother as sole legal custodian.
6. If either party disputes or seeks a change in either legal custody or parenting time, that party shall first attempt to resolve the dispute or change through private mediation or mediation provided by Conciliation Services. No petition to modify custody or parenting time shall be considered absent an affirmative statement by the party seeking modification that mediation has occurred and was unsuccessful, except in cases where there is a genuine and imminent threat to the health, safety, or welfare of the children.
7. At least every two years from the entry of this Decree, the parties shall review the terms of this parenting plan for the purpose of amending said plan in accordance with the needs of the children. If the parties cannot agree after making a good faith effort to come to an agreement regarding amendments to said plan, the parties shall mediate the dispute prior to initiating a proceeding with the Court.

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8. The parents are free to deviate from the parenting time schedule by mutual agreement.

V. CHILD SUPPORT

THE COURT FINDS, for the purpose of the calculating child support, the following monthly income/expenses/adjustments:

| | |
|------------------------------------|---|
| Mother's Income | \$72,300.00 |
| Father's Income | \$43.00/hr (September 1, 2009 - April 30, 2010) |
| | \$16.00/hr (May 1, 2010 - present) |
| Adjustments to Father's Income | \$585.00 child support |
| Child Care Expenses Paid by Mother | \$505.00 per month (beginning March 1, 2011) |
| Health Insurance Paid by Mother | \$44.50 |
| Parenting Time Adjustment | 163 days (September 1, 2009 – April 30, 2010) |
| | 28 days (May 1, 2010 - present) |

These findings, and any other relevant financial factor required or allowed to be included by the Arizona Child Support Guidelines, are set forth in the Child Support Worksheets 1, 2 and 3 filed herewith and are hereby adopted by this reference. Child Support Worksheet 1 represents Father's income as a nurse, working \$43.00 per hour. The Court finds that Father is currently capable of earning \$16.00 per hour. Therefore, Child Support Worksheets 2 and 3 impute income to Father in the amount of \$16.00 per hour. Child Support Worksheet 3 includes day care costs for Mother because she can no longer rely on friends to care for the children.

IT IS ORDERED that Father shall pay child support to Mother in the total amount of \$209.13 per month, commencing September 1, 2009 through April 30, 2010. Father shall pay child support to Mother in the amount of \$310.15, commencing May 1, 2010 through February 28, 2011. Father shall pay child support to Mother in the amount of \$418.06, commencing March 1, 2011. All payments shall be made through the Support Clearinghouse through an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, and during any time when no Order of Assignment is in place, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse. Father shall immediately notify the Court of any change in his employment by filing a Current Employer Information sheet.

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The Court finds that the parties lived apart before the date of the filing of the Petition and that, considering all relevant circumstances including those listed in A.R.S. § 25-320(B), an award of child support retroactive to September 1, 2009 is just and appropriate.

As stated above, the child support obligation was \$209.13 per month from September 1, 2009 through April 30, 2010, which created an arrearage of \$1,673.04. Father's child support obligation was \$310.15 from May 1, 2010 through February 28, 2011, creating a child support arrearage of \$3,101.50. Thus, the total child support arrearage from September 1, 2009 through February 28, 2011 is \$4,774.19.

The Court did not find sufficient evidence to support that Father has paid child support. Therefore,

IT IS ORDERED entering judgment in favor of Mother and against Father for child support arrears in the amount of \$4,774.19, representing child support due for the period September 1, 2009 through February 28, 2011.

IT IS FURTHER ORDERED that Father shall pay \$70.00 per month in addition to the current child support payment toward the child support arrearage until these sums have been paid in full.

The obligation for child support terminates when each child attains the age of 18 years or is otherwise emancipated, but in the event any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which said child is actually attending high school but only until the child reaches 19 years of age. If the parties have more than one child, the amount of child support owed is **not automatically reduced** by the child's share as each child is emancipated; rather the parties **must request a modification** of the child support order in writing and pursuant to the Arizona Rules of Family Law Procedure. Provisions for health insurance and uninsured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right to receive child support payments as provided herein vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

VI. MEDICAL INSURANCE

IT IS ORDERED that Mother shall maintain medical insurance for the minor children. Mother shall ensure that Father is kept informed at all times of the name and address of the

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insurance provider as well as the policy number. Additionally, Mother shall provide Father with valid insurance cards, policy information, and any updated information changes.

IT IS FURTHER ORDERED that any uncovered or uninsured medical, dental, orthodontic, optical, prescription expense, deductible, and co-pay shall be paid 30% by Father and 70% by Mother. If one party pays a health-related expense, any request for reimbursement of the other party's share shall be made within 180 days after the date the health-related services are rendered. A request for receipts or other evidence of payment shall be provided by the party seeking reimbursement upon request of the party from whom reimbursement is sought. The party from whom reimbursement is sought shall make such reimbursement, or make acceptable payment arrangements, within 45 days of the request for reimbursement. Both parties shall use their best efforts to obtain services that are covered by the insurance. A party who is entitled to receive reimbursement from the other party for medical costs not covered by insurance shall, upon request of the other party, provide receipts or other evidence of payments actually made.

VII. DEPENDENCY EXEMPTION

Pursuant to Rule 27 of the Arizona Child Support Guidelines, allocation of the dependency exemption between the parties generally proportionate to income is appropriate. Based thereon,

IT IS ORDERED that Mother may claim the dependency exemption for Paige in every odd-numbered year and for Sydney in every tax year. Father may claim the dependency exemption for Paige in every even-numbered tax year. If the party entitled to the exemption does not realize a financial benefit from the exemption for a given tax year, the other party shall be entitled to claim the tax exemption for that tax year.

IT IS FURTHER ORDERED that Father's right to claim the exemption in any given year is conditioned upon payment by Father by December 31st of the total Court-ordered monthly child support obligation for that calendar year and any Court ordered arrearage payments due during the calendar year for which the exemption is to be claimed.

VIII. EXCHANGE OF INCOME INFORMATION

IT IS ORDERED that the parties shall exchange income information every twenty-four (24) months from the date of the entry of this Decree of Dissolution of Marriage for so long as a child support obligation is in place. Said financial information shall include, but is not limited to: personal tax returns with all schedules, affidavits of financial information, earning statements, and other such documentation necessary to establish or prove the income of either party. In

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addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

IX. SPOUSAL MAINTENANCE

THE COURT FINDS that neither party seeks an order of spousal maintenance or meets the criteria set forth in A.R.S. §25-319(A) for an award of spousal maintenance. Accordingly,

IT IS ORDERED that spousal maintenance is not awarded to either party.

X. PROPERTY

THE COURT FINDS:

1. After the parties' separation, Father withdrew his 401K, which was community property. Exhibit 8 showed that approximately \$102,612.44 was distributed from Father's 401K in April 2010. After payment of taxes and penalties, \$86,941.25 was placed in a Wells Fargo IRA Rollover Account. The Court finds that Mother is entitled to one-half \$86,941.25 or \$43,470.63.
2. Mother has a 401K with Phoenix Children's Hospital with a value of approximately \$38,873.29. Father is entitled to one-half \$38,873.29 or \$19,436.65. Therefore, the remaining amount owed by Father to Mother is \$24,034.00.

IT IS ORDERED:

1. Mother is awarded \$24,034.00 from the Wells Fargo Account (XXX6850). After Mother is awarded \$24,034.00 from the Wells Fargo Account (XXX6850), Father shall be awarded the amount remaining in the account.
2. Mother is awarded her 401K with Phoenix Children's Hospital as her sole and separate property. Mother is awarded her 401K with John C. Lincoln as her sole and separate property.
3. Each party shall retain as his or her sole and separate property any and all personal property in that party's possession, including, without limitation, furniture, household items, appliances, tools, art work, collectibles, and personal effects.

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4. Each party shall retain as his or her sole and separate property any savings, checking or other financial account held in that party's name.
5. Mother is awarded the 2007 Ford Expedition subject to her being solely liable for any loans or financial obligations associated therewith. Father is awarded the 2003 Yamaha motorcycle, 2008 Dodge Calibur, and 2007 Coachman Freelandier RV subject to him being solely liable for any loans or financial obligations associated therewith.
6. Mother is awarded as her sole and separate property, subject to any liens or encumbrances thereon, the residence and real property located at 15199 West Dahlia, Phoenix, Arizona. Mother shall, within ninety days of the entry of this Decree and every six months thereafter, use her best efforts to refinance the underlying debt on the marital residence that is in the parties' joint names for the purpose of removing Father's name from the underlying debt. Mother shall provide to Father a copy of any and all documentation reflecting any application(s) for said refinance(s) and the response(s) of the respective financial institutions regarding said application(s). Father may also communicate directly with the current lender for the sole purpose of removing his name from said debt. If Mother is unable to remove Father's name from said debt within two years of the entry of this Decree, Father may seek further relief from this Court.
7. Any community, joint tenancy, or other property held in common by the parties which is not the subject of any orders herein shall be held by the parties as tenants in common, each possessing an undivided one-half interest, as of the date of this Decree.

XI. DEBTS

IT IS ORDERED that Father shall be solely liable for, indemnify and hold Mother harmless from the following debts and financial obligations:

1. One-half the Best Buy debt, approximately \$2,000.00.
2. One-half the Chase Credit Card debt, approximately \$1,000.00
3. Unless otherwise provided herein, any financial obligations associated with or arising from any property awarded to Father herein.

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4. Any debts or financial obligations incurred by Father after the date of service of process.
5. If Mother is named as a liable party on any debt listed above, Father shall, within sixty days, take all available steps to remove Mother's name as a liable party from said debt.

IT IS FURTHER ORDERED that Mother shall be solely liable for, indemnify and hold Father harmless from the following debts and financial obligations:

1. One-half the Chase Credit Card, approximately \$1,000.00.
2. One-half the Best Buy debt, approximately \$2,000.00.
3. Kohl's Credit Card.
4. Unless otherwise provided herein, any financial obligations associated with or arising from any property awarded to Mother herein.
5. Any debts or financial obligations incurred by Mother after the date of service of process.
6. If Father is named as a liable party on any debt listed above, Mother shall, within sixty days, take all available steps to remove Father's name as a liable party from said debt.

IT IS FURTHER ORDERED that any debts or financial obligations not addressed herein or subsequently discovered and incurred by either party prior to the date of service of process shall be the sole obligation of the party who incurred said debt or obligation, and that party shall indemnify and hold the other harmless therefrom.

XII. PARENTING COORDINATOR

Further the Court is appointing a parenting coordinator for the parties. Within two weeks of the date of this Decree, the parties shall exchange names of two proposed parenting coordinators. If the parties reach agreement on the parenting coordinator, they may file a stipulation with the Court, indicating that they have reached an agreement on the parenting coordinator and including the name of the selected parenting coordinator. If the parties do not reach agreement within 21 days of the date of this Order, Mother's counsel shall file a blind list

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of four proposed parenting coordinators (two names proposed by each party). The parties may find names and information regarding potential parenting coordinators at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/FamilyCourt/docs/BHRoster.xls>

XIII. ATTORNEYS' FEES

The Court has considered the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, in accordance with A.R.S. § 25-324.

THE COURT FINDS that Mother has superior financial resources. In large part, Mother's superior financial resources are a result of Father's failure to comply with his drug and alcohol testing requirements, which ultimately resulted in Father being terminated from his job. Further the Court finds that Father's lack of candor with Mother and the Court regarding his sobriety was unreasonable.

IT IS ORDERED awarding Mother one-half of her reasonable attorneys' fees and costs incurred in connection with preparing for and attending the February 1, 2011 trial. Mother shall file an application for attorneys' fees and costs along with a *China Doll* affidavit within 30 days of today's date. Mother's application for attorneys' fees and costs will be lodged for objections in accordance with the Arizona Rules of Family Law Procedure. The Court will thereafter rule on the application without further reply or oral argument.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/: PAMELA GATES

Honorable Pamela S. Gates
Judge of the Superior Court

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.